

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

THE MCBURNEY CORPORATION

and

Cases 26-CA-17564
26-CA-17979
26-CA-18017

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP
BUILDERS, BLACKSMITHS, FORGERS
AND HELPERS, AFL-CIO

Bruce E. Buchanan, Esq.,
for the General Counsel.
Dion Y. Kohler and Mark Crawford, Esqs.,
(Jackson, Lewis, Schnitzler & Krupman),
of Atlanta, Georgia,
for the Respondent.
Michael J. Stapp, Esq.,
(Blake & Uhlig, P.A.),
of Kansas City, Kansas,
for the Charging Party.

SUPPLEMENTAL DECISION

KARL H. BUSCHMANN, Administrative Law Judge. On June 7, 2000, the Board issued an Order Remanding Proceeding to Administrative Law Judge for further consideration in light of *FES (A Division of Thermo Power)*, 331 NLRB No. 20 (2000). My decision in this case issued on September 21, 1998, finding that the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by, inter alia, refusing to consider and hire job applicants because of their union affiliations. The parties filed exceptions and cross-exceptions to the decision. On May 11, 2000, while the decision was pending before the Board, it issued its decision in *FES*, setting forth the framework for analysis of refusal-to-hire and refusal-to-consider violations.

On August 18, 2000, I issued an order to the respective parties to show cause why my decision, dated September 21, 1998, is not in accord with the Board's holding in *FES* and to show what changes, if any are necessary.

The General Counsel filed a Supplemental Brief containing a thorough analysis of the decision in this case under the guidelines of *FES*. The General Counsel concluded:

Accordingly, Counsel for the General Counsel respectfully submits the Board's analysis under *FES* fully supports a finding that Respondent violated Section 8(a)(3) of the Act when it refused to hire the named discriminatees. [G.C. Br. 18.]

The Charging Party similarly submitted a Response to the Order to Show Cause, stating inter alia:

In the present case, the Administrative Law Judge made findings that read almost as if he anticipated the decision in *Thermo Power*. [C. P. Br. 5.]

The Respondent's response to my decision concluded, after a detailed analysis, that the decision does not satisfy the *FES* standard, that the record is insufficient to establish a prima facie case of a refusal-to-hire violation and, in any case, that a revised remedy is required for a refusal-to-consider for hire discriminatees.

In accordance with the Board's order, I have considered my decision in the light of *FES*, particularly as to whether the discriminatees had the requisite experience for the positions and whether the requirements were uniformly applied or pretextual or pretextually applied. In this regard, I have considered the responses submitted by the parties to the Order to Show Cause and I have reconsidered my decision as urged by the Respondent.

The *FES* requirements for a refusal-to-hire case are:

(1) that the respondent was hiring, or had a concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the position for hire, or in the alternative, that the employer had not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for the discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants.

Once this has been established, the Respondent has the burden of showing that it would not have hired the applicants even in the absence of the union activity.

According to my decision in this case, the Respondent refused to hire applicants affiliated with the Union at several construction sites, including Towanda, Pennsylvania; Libby, Montana; and Prescott, and Arkadelphia, Arkansas. I found that the Respondent refused to hire 19 job applicants at the Towanda project.¹ As required in *FES*, I made a finding that the Respondent was hiring at the time of its refusal to hire the 20 union applicants. In this regard, I found that during the relevant times in November and December 1995, the Respondent employed 22 pipewelders, pipefitters, welders, and millwrights at the Towanda construction site. They are identified in a joint exhibit (Jt. Exh. 1), which was submitted and admitted into the record following the hearings in this case.² It is also uncontested that none of these

¹ The number of job applicants was actually 20. Nick Simpson who applied for work on November 1 and on December 8 and 14, 1995, should have been included, as now reflected in the modified order (G.C. Exh. 6). James Clayton, a foreman at Towanda, was also referred to as "Jimbo" Clayton. James Bragan was sometimes referred to as (Jay) Bragan.

² On October 27, 1995, the Respondent employed Tim Lester, pipewelder; Danny Chappell, pipewelder; and Joseph Meehan, journeyman [Lawrence Nichols was employed on October 30 and not on October 27, as stated in my decision]. On October 30, 1995, the Respondent employed Glen Lewis, pipefitter; Ed Wilston, pipefitter; Joe Tomberlin, pipefitter; and Lawrence Nichols, pipefitter. In November 1995, the Respondent hired the following eight journeymen: Randy Brown, John Dragon, George White, Cary Locklear, Thomas Marston, Kenneth Denmark, William Douglas, and Don Little. In December, the Respondent placed the following

Continued

employees were affiliated with the Union. Moreover, the record is clear that in January and February 1996, the Respondent continued to hire nonunion employees at the Towanda jobsite, at a time when several of the discriminatees who had already applied previously and also several new applicants with a union background visited the jobsite in search of work. Again, approximately 20 nonunion employees, as identified in my decision, became employees at Towanda in January and February 1996. The record, accordingly, shows that the Respondent hired a total of more than 40 pipefitters, pipewelders, and journeyman welders at Towanda, often within days after the date of the applications by the discriminatees, as properly observed by the General Counsel and the Charging Party. Considering that this scenario is not contested, and that the Respondent, filled at least two positions for each one union application, I cannot accept Respondent's argument that "no finding was made as to whether there was a sufficient number of openings for the applicants/alleged discriminatees."

The second element in *FES*, namely the applicants' experience and training relevant to these positions, is equally substantiated. In this regard the record shows that all 20 applicants at the Towanda jobsite were highly skilled as welders, boilermakers, pipe or tube welders, or riggers (G.C. Exh. 6). Their experience in the trade ranged from 6 to 28 years of experience. For example, a letter dated October 26, 1995, from the Union to James Austin, Respondent's field superintendent at the Towanda project, states in reference to the five boilermaker applicants who first applied for jobs on October 25, 1995 (David Packer, James Neumane, Michael Kitchen, Richard DeHaut, and James (Jay) Bragan:

I would like to point out that all of these men possess a myriad of qualifications, including, but not limited to, pipe fitting, all facets and types of welding, burning, arc and flame gauging, lay-out, rigging, blueprint reading, tube rolling, tank building, hydro blasting, iron working, etc.

The Respondent's answer to the letter did not dispute the applicants' skills, which were obviously listed in greater detail in their applications. Instead, the Respondent's reply of May 2, 1996, emphasized its reliance upon a priority hiring policy for the refusal to hire the union applicants (G.C. Exh. 3):

Thank you for your letter dated April 25, 1996. I am sure that you recognize in today's highly competitive business climate companies such as McBurney must do all we can to assure the best personnel are hired on our projects. To that end, The McBurney Corporation has developed the following standard hiring practice followed by all our projects. In priority the hiring steps are listed below:

1. Personnel transferred from other McBurney jobs.
2. Personnel who have previously worked for McBurney.
3. Personnel who are known by a McBurney employee.
4. Call-ins and walk-ons.

seven journeymen on its payroll: Claude Gouge, Dale Carter, Ronald Vick, Tommy Fennell, Johnny Fennell, Wayne Cunningham, and Robert Argraves.

The list of personnel attached to your letter are considered "walk-ons" per McBurney standard hiring practice. We will gladly consider the list within the guidelines of our hiring practice.

5 The Company's position document, which is also part of the record, reflects the same, namely the Company's reliance upon its priority hiring policy to the applicants' efforts to be employed (G.C. Exh. 5). The caliber of the applicants and their high degree of skills were clearly reflected in their applications. Moreover, Millard J. D. Howell, John Manculich, and Ernest Patterson had worked previously for the Company and were considered to be good employees. Several of the applicants testified in this case and summarized their qualifications as follows: [J. D. Howell (Tr. 87)]: A welder, stig, tig, fitter, pipe, duct work, various parts of the boiler work, and a rigger. Including heavy lift rigging.

15 [Allen Layaou (Tr. 404)]: Welding, fitting, just about anything that's required within the boilermakers union. Tube welding, stainless welding, make welding, stick welding, plate, pipe welding.

20 [Greg Strazdus (Tr. 418)]: I'm a welder, rigging, work in confined spaces, work high altitudes. Heliarc welding, stick welding, mig welding, Fluxcore welding, that's about it.

25 [Roger Jayne (Tr. 429)]: I'm a certified welder, I graduated apprenticeship. I went to a four year apprenticeship. Rigging, I have rigging qualifications, blue print reading and I've done a pretty lot as far as boilermakers skills concern. I'm a plate welder and a Heliarc welder, which is pressure welder.

30 [Lee Namiotka (Tr. 438-39)]: My particular skill is in welding and rigging. As a boilermaker, we do a lot of other layout work, blueprint reading, mostly industrial work. Mostly what our welding pertains to is tube welding, duct work, the types are stig, mig, tig, such as the Heliarc process of stick rod or automatic process with the mig and the automatic machines is what they use.

35 [James Bragan (Tr. 456)]: Welding, rigging, fitting, iron working, blueprint reading, laying out different types of welding, mig, tig, stack, orbital welding.

40 [Durland Siglin (Tr. 485)]: I covered all the welding procedures for the SAME code and AWS codes. I do mig welding, tig welding, stick welding, automatic.

45 [John Manculich (Tr. 193)]: We rig – we weld, I fit. I have specialty cards in welding, there's plate welding, tig welding as in tube welding, mig gun and other specialty rods also.

 [Christopher Andrew Monohan (Tr. 221)]: As a boilermaker I've done numerous skills such as mechanics work, welding, rigging, high connection of steel. I've done various processes of mig, stick, and tig welding.

 [Dan Barney (Tr. 234)]: Structural welding, stick welding, rigging. Ten years, off and on.

 [Ernest Skip Patterson (Tr. 301)]: I've got 18 different certifications with 18 different contractors. I do heavy rigging, specialty welding, fitting, all phases of boilermaker work . . . Plate welding, tube welding, stainless, nickel . . .

 [Bruce Kemp (Tr. 334)]: Structural welder . . . 25 years or over.

[Dale Branscum (Tr. 359)]: I've performed work as a rigger, a fitter, I have moved up and learned to weld and obtained several welding certifications, different types of metal composure. . . . Yes, I have performed stick welding structural or plate welding, I have certifications or had certifications in those areas. Also limited experience with Mig welding my area when I got out of field construction work was in the tube welding or tig process.

Even though the other applicants did not testify, their experience and skill are reflected in the record as follows (G.C. Exh. 6):

Richard DeHaut – 18 years as welder; Mike Kitchen – 18 years as pipe or tube welder; James Neumane – 17 years as pipe or tube or plate welder; David Packer – 20 years as pipe or tube welder; Thomas Clark – 12 years as welder; Bradley Everetts – 13 years as welder; Dave Gotowski – 12 years as welder or boilermaker; and John LaPointe – 20 years as tube welder.

The qualifications of these applicants clearly corresponds to the line of work and the trades of the more than 40 nonunion employees who were hired at Towanda. Having failed to contest the caliber of the applicants, the Respondent's argument that the qualifications of some of the applicants have not been established is clearly without merit.

The record is clear that the Respondent discriminated against the union applicants because they were affiliated with the Union. As found in my decision, the Respondent has shown its antiunion animus in various ways.

The Respondent engaged in unlawful surveillance of the two most recently hired employees after they had announced their intentions to organize Respondent's workforce. Dan Barney and Bruce Kemp, who had no union affiliation, were hired on January 16, 1996, and January 24, 1996, respectively. After they notified management by letter of February 7, 1996, of their intentions to organize the workforce, Supervisors James Clayton and Rusty Reid made a determined effort to stare at and observe the employees in the breakroom with the chilling and coercive effect on their rights to engage in union activities. In addition, Barney was wrongfully reassigned to more difficult and more onerous working conditions because of his union activities. Significantly, management frequently misrepresented and misled the union applicants about the Company's hiring plans and repeatedly lied to the applicants about the Company's intentions to hire, as described in greater detail in my decision.

The Respondent never argued that the union applicants were unqualified for the available jobs, but it defended its failure to hire union applicants by relying on the Company's priority hiring policy. However, by all accounts, this policy was not uniformly enforced, nor consistently applied, nor universally understood. Instead, management used the priority hiring system selectively and systematically to avoid the hiring of union applicants. For example, while professing to hire transfers, previous employees and individuals known by supervisors or employees on a preferential basis, before hiring "call-ins" or "walk-ins," the Respondent hired three walk-ins at Towanda but managed to avoid the hiring any of the 20 union applicants. The Respondent rejected from the hiring process J. D. Howell, Ernest (Skip) Patterson, and John Manculich who were previous employees in violation of its own policy which would have required their employment in preference to the three walk-ins.

For the foregoing reasons and as more fully stated in my decision and as fully supported in the record, the Board's standards in *FES* have been met to establish Respondent's violation of the Act as alleged.

The Respondent has certainly failed to carry its burden of showing that the union applicants would not have been hired even in the absence of any union considerations. As already stated, the Respondent's reliance on its priority hiring policy was misplaced, particularly, where as here, every single union applicant was rejected despite their high level of expertise in the trade, and where none of the employees hired had any union affiliation.

Dan Barney and Bruce Kemp, who were working at the Towanda construction site in April 1996, were refused a transfer to a new construction project in Libby, Montana.³ Jim Clayton became the field superintendent at the Libby project and had promised Barney a job if he was willing to travel to Montana. However, on April 29 or 30, 1996, when Barney notified Clayton that he was ready to come to Libby, Montana, because he had been laid off from the Towanda project, Clayton rejected Barney's efforts to seek employment. Yet the Respondent hired approximately 19 journeymen after April 29, 1996, including walk-ins or new hires, as identified in my decision. Barney was highly regarded for his skills and job performance and, as previous employees, he and Kemp should have been employed at the Libby project in preference to any of the newly hired employees. Clearly, the motivating factors in Respondent's refusal to hire Barney and Kemp were their union activities. Again, the Respondent has completely failed to show that these men would not have been hired even in the absence of their union activity.

The Respondent continued its discriminatory hiring process at two other projects, one in Prescott and one in Arkadelphia, Arkansas. The record clearly shows that the Respondent commenced the hiring process in Prescott in late March and early April 1996. Initially, Tommy Cooper, field superintendent, hired two helpers and after April 23, 1996, he hired nine journeymen and additional helpers (Jt. Exh. 3).⁴ The Respondent also began to hire journeymen at its Arkadelphia project, beginning May 1, 1996. At least eight journeymen were hired, as well as four helpers (Jt. Exh. 4).⁵ The General Counsel has clearly shown that the Respondent was hiring and had concrete plans to hire.

On April 16, 1996, Dale (Skip) Branscum, a boilermaker, visited the jobsite at Prescott and inquired about a job. Cooper told him that he needed six boilermakers and a few helpers. On April 23, 1996, when Branscum called Cooper about his application, Cooper said that he had a job for him, and that he would consider additional applicants. Until that point Branscum had not disclosed his union affiliation. On April 23, 1996, Branscum, accompanied by 14 union members, visited the jobsite and spoke to Cooper. Branscum identified himself as a union representative for Local 69 and introduced the applicants as union members. The applicants filled out applications. Timothy Coffey, one of the applicants, testified about his brief conversation with Cooper and recalled that Cooper told him that he needed helpers and welders. The following 15 union members filled out applications (G.C. Exh. 2):

³ Bruce Kemp will appear in the revised order as one of the discriminatees who was refused employment.

⁴ The Respondent hired as journeymen: Bobby Bush, Christopher Bush, Joe Stanton, Marshall McGee, Wade Crawford, Ray Thurber, Randy Brown, Carla Sowell, and Wayne Sowell. Hired as helpers were Levester Gillard, Jerry Hicks, Stephen Williams, Waylon Cooper, and Dale Nagasawa.

⁵ The following journeymen were hired: Ronald Matkin, Paul Mims, Ellis Tidwell, Marty Kirkpatrick, Gary Presnell, Kyle Wilds, Donald Foreman, and James Mears; the following helpers were hired: Chris Cranford, Henry Wilson, Anthony Deville, and Matthew Thrower.

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| | Dale (Skip) Branscum | boilermaker, welder, 19 years |
| | Donald Hensley | journeyman welder (boilermaker), |
| | Carl Edds | journeyman welder (boilermaker), |
| | Billy Altom | apprentice, |
| 5 | Bobbie Hay | journeyman welder (boilermaker) |
| | Bobby Woodall | journeyman welder (boilermaker), |
| | Tim Coffey | apprentice, |
| | Garry Woodall | journeyman welder (boilermaker), |
| | Mark Branscum | journeyman welder, fitter, rigger, |
| 10 | Danny Bielss | welder, rigger, fitter (30 yrs. experience), |
| | J. D. Woodall | boilermaker, rigger (37 years), |
| | Daniel Neal | journeyman fitter, rigger, |
| | Devin Woodall | journeyman fitter, rigger, |
| | Henry (Hank) Coffey | journeyman welder (boilermaker), |
| 15 | Jerry Burks | journeyman welder, rigger. |

20 The high level of skills of the applicants was not disputed. Indeed, according to the credible testimony of Dale Branscum, one of the journeymen boilermakers, Cooper, looked through the applications and said that they were highly skilled. According to the same testimony, Cooper said that if he could not put all the applicants to work at the Prescott site, he would be able to employ them at Arkadelphia, because he needed a lot of people, especially welders and pipewelders. Another witness, Marjorie Howell, wife of one of the applicants, J. D. Howell, similarly testified that Cooper told her in a telephone conversation of May 14, 1996, that if he could not use J. D. Howell at Prescott, he might be able to use him elsewhere. Howell, subsequently sent a letter, dated May 31, 1996, to Respondent's vice president, Donald Usher, recommending for employment the 15 applicants. Howell identified himself as a former McBurney employee and referred to the Company's priority hiring policy calling for preferential treatment of individuals recommended by McBurney employees (GC Exh. 8).

30 Contrary to the representatives made to Branscum, Howell, and Coffey, the Respondent refused and failed to hire any of the applicants who were identified as union members. Accordingly, the General Counsel has demonstrated, as required in *FES* that the Respondent was hiring at the Arkansas construction sites, that the applicants were amply qualified for the positions, and that the Company refused to employ them because of their union affiliations. The Respondent made conflicting and misleading statements to several of the applicants, notably the promises to hire the applicants until they had disclosed their union affiliations. The record is replete with evidence that antiunion animus was the motivating factor in the Respondent's decision to avoid the employment of any union members. Examples are 8(a)(1) violations already discussed, as well as the calculated manipulation of the priority hiring practice, as well as the Respondent's consistent practice of excluding union applicants in any of its several construction sites. The Respondent has failed to show that its hiring decisions were based on legitimate business considerations and that it would have refused to hire these individuals even in the absence of union considerations.

45 In my reconsideration of this case in the light of *FES*, 331 NLRB No. 20, I must emphasize that the Local 69 members who applied at the Prescott and Arkadelphia construction sites were refused employment, as opposed to a failure to be considered for hire.⁶ The record

⁶ I hereby correct my finding in the remedy section of my decision of September 21, 1998 that these applicants were not considered for hire or that there is no evidence of the Respondent's consideration of these applicants for hire.

contains abundant evidence that the Respondent harbored antiunion animus and acted upon it by refusing to hire any of the applicants. Accordingly, I find that the General Counsel has established a prima facie case and that the Respondent failed to show that it would have made the same hiring decision even in the absence of any union considerations.

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Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By surveilling the union organizing activities of its employees, the Respondent violated Section 8(a)(1) of the Act.

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4. By changing the work assignment of its employee Daniel Barney because of his union organizing activity, the Respondent violated Section 8(a)(1) and (3) of the Act.

5. By failing and refusing to consider and hire the following applicants at the Towanda jobsite: Millard J.D. Howell, Nick Simpson, James Bragan, Mike Kitchen, James Neumane, Rich DeHaut, David Packer, Brad Everetts, Thomas Clark, Roger Jayne, Al Layaou, Lee Namiotka, Kurt Babcock, Dave Gotowski, Greg Strazduz, Durland Siglin, Christopher Monahan, Ernest (Skip) Patterson, John LaPointe, and John Manculich because of their union affiliation, the Respondent violated Section 8(a)(1) and (3) of the Act.

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6. By failing to consider and hire Dan Barney and Bruce Kemp at the Libby, Montana jobsite because of their union activities, the Respondent violated Section 8(a)(1) and (3) of the Act.

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7. By refusing to consider and hire the following employees at the Prescott and Arkadelphia, Arkansas jobsites, Billy Altom, Danny Bielss, Dale (Skip) Branscum, Mark Branscum, Jerry Burks, Henry (Hank) Coffey, Tim Coffey, Carl Edds, Bobbie Hay, Donald Hensley, J. D. Howell, Daniel Neal, Bobby Woodall, Devin Woodall, Garry Woodall, and J. D. Woodall, because of their affiliation with the Union, the Respondent violated Section 8(a)(1) and (3) of the Act.

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8. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

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The Remedy

Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, I shall order the Respondent to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

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Having found that the Respondent unlawfully discriminated against the named job applicants, I will order it to offer them reinstatement or employment to the same or substantially equivalent positions at other projects as close as possible to the respective jobsite. In addition, I shall order the Respondent to make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful discrimination against them, from the date they applied for employment, to the date that the Respondent makes them a valid offer of reinstatement or employment. Such amounts shall be computed in a manner prescribed in

F. W. Woolworth Co., 90 NLRB 289 (1950), and shall be reduced by net interim earnings, with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondent, The McBurney Corporation, Norcross, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in surveillance of employees' union activities.

(b) Changing work assignments of its employees because of their union activities.

(c) Refusing to consider for employment and refusing to hire qualified applicants, because of their union affiliation.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order offer Millard J. D. Howell, Nick Simpson, James Bragan, Mike Kitchen, James Neumane, Rich DeHaut, David Packer, Bradley Everetts, Thomas Clark, Roger Jayne, Al Layaou, Lee Namiotka, Kurt Babcock, Dave Gotowski, Greg Strazdus, Durland Siglin, Christopher Monahan, Ernest (Skip) Patterson, John LaPointe, John Manculich, Daniel Barney, Billy Altom, Danny Bielss, Mark Branscum, Jerry Burks, Henry (Hank) Coffey, Carl Edds, Bobbie Hay, Donald Hensley, Daniel Neal, Bobby Woodall, Devin Woodall, Gary Woodall, J. D. Woodall, Tim Coffey and Bruce Kemp employment in positions for which they applied or, if such positions no longer exist to substantially equivalent positions, without prejudice to their seniority and any other rights or privileges previously enjoyed.

(b) Make them whole for any loss of earnings and other benefits that they may have suffered as a result of Respondent's discrimination against them, as set forth in the remedy section of my decision of September 21, 1998.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Within 14 days after service by the Region, post at its facility in Norcross, Georgia, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 20, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 30, 2001.

Karl H. Buschmann
Administrative Law Judge

⁸ If this Order is enforced by a Judgment of the United States court of appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT engage in surveillance of employees' union activities.

WE WILL NOT change work assignments of our employees because of their union activities.

WE WILL NOT refuse to consider for employment and refuse to hire qualified applicants, because of their union affiliation.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you under Section 7 of the Act.

WE WILL within 14 days from the date of this Order offer Millard J. D. Howell, Nick Simpson, James Bragan, Mike Kitchen, James Neumane, Rich DeHaut, David Packer, Bradley Everetts, Thomas Clark, Roger Jayne, Al Layaou, Lee Namiotka, Kurt Babcock, Dave Gotowski, Greg Strazdue, Durland Siglin, Christopher Monahan, Ernest (Skip) Patterson, John LaPointe, John Manculich, Daniel Barney, Dale Branscum, Billy Altom, Danny Bielss, Dale (Skip) Branscum, Mark Branscum, Jerry Burks, Henry (Hank) Coffey, Carl Edds, Bobbie Hay, Donald Hensley, Daniel Neal, Bobby Woodall, Devin Woodall, Garry Woodall, J. D. Woodall, Tim Coffey and Bruce Kemp employment in positions for which they applied or, if such positions no longer exist to substantially equivalent positions, without prejudice to their seniority and any other rights or privileges previously enjoyed.

WE WILL make them whole for any loss of earnings and other benefits that they may have suffered as a result of our discrimination against them, less any interim earnings, plus interest.

THE MCBURNEY CORPORATION

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104-3627, Telephone 901-544-0011.